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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF WASHINGTON**

7 TODD ALLEN COONEY,
8 Plaintiff,
9 vs.
10 COMMISSIONER OF SOCIAL
11 SECURITY,
12 Defendant.

No. 1:15-cv-03218-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 15, 16

13 BEFORE THE COURT are the parties' cross-motions for summary
14 judgment. ECF Nos. 15, 16. The parties consented to proceed before a magistrate
15 judge. ECF No. 7. The Court, having reviewed the administrative record and the
16 parties' briefing, is fully informed. For the reasons discussed below, the Court
17 denies Plaintiff's motion (ECF No. 15) and grants Defendant's motion (ECF No.
18 16).

19 **JURISDICTION**

20 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 1331(c)(3).

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether the standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an ALJ's decision on account of an error that is harmless." *Id.* An error is harmless "where it is inconsequential to the [ALJ's] ultimate nondisability determination." *Id.* at 1115 (quotation and citation omitted). The

1 party appealing the ALJ's decision generally bears the burden of establishing that
2 it was harmed. *Shineski v. Sanders*, 556 U.S. 396, 409-410 (2009).

3 FIVE-STEP EVALUATION PROCESS

4 A claimant must satisfy two conditions to be considered "disabled" within
5 the meaning of the Social Security Act. First, the claimant must be "unable to
6 engage in any substantial gainful activity by reason of any medically determinable
7 physical or mental impairment which can be expected to result in death or which
8 has lasted or can be expected to last for a continuous period of not less than twelve
9 months." 42 U.S.C. §§ 423(d)(1)(A); 1382c(a)(3)(A). Second, the claimant's
10 impairment must be "of such severity that he is not only unable to do his previous
11 work[,] but cannot, considering his age, education, and work experience, engage in
12 any other kind of substantial gainful work which exists in the national economy."
13 42 U.S.C. §§ 423(d)(2)(A); 1382c(a)(3)(B).

14 The Commissioner has established a five-step sequential analysis to
15 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
16 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner
17 considers the claimant's work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);
18 416.920(a)(4)(i). If the claimant is engaged in "substantial gainful activity," the
19 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
20 404.1520(b); 416.920(b).

1 If the claimant is not engaged in substantial gainful activity, the analysis
2 proceeds to step two. At this step, the Commissioner considers the severity of the
3 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the
4 claimant suffers from "any impairment or combination of impairments which
5 significantly limits [his or her] physical or mental ability to do basic work
6 activities," the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);
7 416.920(c). If the claimant's impairment does not satisfy this severity threshold,
8 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
9 §§ 404.1520(c); 416.920(c).

10 At step three, the Commissioner compares the claimant's impairment to
11 severe impairments recognized by the Commissioner to be so severe as to preclude
12 a person from engaging in substantial gainful activity. 20 C.F.R. §§
13 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more
14 severe than one of the enumerated impairments, the Commissioner must find the
15 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

16 If the severity of the claimant's impairment does not meet or exceed the
17 severity of the enumerated impairments, the Commissioner must pause to assess
18 the claimant's "residual functional capacity." Residual functional capacity (RFC),
19 defined generally as the claimant's ability to perform physical and mental work
20 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§

1 404.1545(a)(1); 416.945(a)(1), is relevant to both the fourth and fifth steps of the
2 analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's
4 RFC, the claimant is capable of performing work that he or she has performed in
5 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv); 416.920(a)(4)(iv).
6 If the claimant is capable of performing past relevant work, the Commissioner
7 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f); 416.920(f).
8 If the claimant is incapable of performing such work, the analysis proceeds to step
9 five.

10 At step five, the Commissioner considers whether, in view of the claimant's
11 RFC, the claimant is capable of performing other work in the national economy.
12 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,
13 the Commissioner must also consider vocational factors such as the claimant's age,
14 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v);
15 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the
16 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
17 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other
18 work, analysis concludes with a finding that the claimant is disabled and is
19 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1); 416.920(g)(1).

The claimant bears the burden of proof at steps one through four above.

Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such work “exists in significant numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.920(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

ALJ'S FINDINGS

8 Plaintiff applied for Title II disability insurance benefits and Title XVI
9 supplemental security income benefits on August 9, 2012, alleging a disability
10 onset date of May 1, 2011.¹ Tr. 184-96. He later amended the onset date to May
11 13, 2012. Tr. 30-31. The applications were denied initially and upon
12 reconsideration. Tr. 71-84, 87-104. Plaintiff appeared at a hearing before an
13 Administrative Law Judge (ALJ) on March 28, 2014. Tr. 27-68. On May 28,
14 2014, the ALJ denied Plaintiff's claim. Tr. 9-26.

¹ The ALJ identified the date of both applications as July 9, 2012. Tr. 12. This clerical error does not affect the Court's analysis.

1 At the outset, the ALJ determined that Plaintiff's date last insured was
2 December 31, 2016.² Tr. 14. At step one, the ALJ found that Plaintiff has not
3 engaged in substantial gainful activity since May 21, 2012. Tr. 14. At step two,
4 the ALJ found Plaintiff has the following severe impairments: chronic liver
5 disease/cirrhosis and gastrointestinal (GI) hemorrhage. Tr. 14. At step three, the
6 ALJ found that Plaintiff does not have an impairment or combination of
7 impairments that meets or medically equals a listed impairment. Tr. 15. The ALJ
8 then concluded that Plaintiff has the RFC to perform light work with the following
9 nonexertional limitations:

10 He can occasionally lift and carry 20 pounds, frequently lift and carry 10
11 pounds, stand and walk about 4 hours in an 8-hour workday, and sit without
12 restriction in an 8-hour workday. He is limited to occasional stooping,
kneeling, crouching, and climbing ramps, stairs, and ladders. He must avoid
all exposure to climbing ropes or scaffolds, working at heights, and
operating heavy equipment.

13 Tr. 16. At step four, the ALJ found that Plaintiff is not capable of performing past
14 relevant work. Tr. 20. The ALJ determined at step five that there are jobs that
15 exist in significant numbers in the national economy that the Plaintiff can perform
16

17 _____
18 ² In order to obtain disability benefits, Plaintiff must demonstrate that he was
19 disabled prior to his last insured date. See 42 U.S.C. § 423(c); 20 C.F.R.
20 § 404.1520.

1 given his age, education, work experience, and residual functional capacity, such
2 as assembler, escort vehicle driver, and document preparer. Tr. 21. On that basis,
3 the ALJ concluded that Plaintiff is not disabled as defined in the Social Security
4 Act. Tr. 22.

5 On October 30, 2015, the Appeals Council denied review, making the
6 Commissioner's decision final for purposes of judicial review. *See* 42 U.S.C.
7 1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.

8 ISSUES

9 Plaintiff seeks judicial review of the Commissioner's final decision denying
10 him supplemental security income benefits under Title XVI and disability
11 insurance benefits under Title II of the Social Security Act. ECF No. 15. Plaintiff
12 raises the following issues for this Court's review:

- 13 1. Whether the ALJ properly weighed the medical opinion evidence;
- 14 2. Whether the ALJ properly discounted Plaintiff's symptom claims; and
- 15 3. Whether the ALJ properly determined at step five that there were specific
16 jobs available in significant numbers that Plaintiff could perform given
17 his assessed limitations.

18 ECF No. 15 at 4.

DISCUSSION

A. Medical Opinion Evidence

Plaintiff faults the ALJ for discounting the medical opinion of treating physician David Lindgren, M.D. ECF No. 15 at 6-9.

There are three types of physicians: "(1) those who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant (examining physicians); and (3) those who neither examine nor treat the claimant but who review the claimant's file (nonexamining or reviewing physicians)."

Holohan v. Massanari, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (brackets omitted). “Generally, a treating physician’s opinion carries more weight than an examining physician’s, and an examining physician’s opinion carries more weight than a reviewing physician’s.” *Id.* “In addition, the regulations give more weight to opinions that are explained than to those that are not, and to the opinions of specialists concerning matters relating to their specialty over that of nonspecialists.” *Id.* (citations omitted).

If a treating or examining physician's opinion is uncontradicted, an ALJ may reject it only by offering "clear and convincing reasons that are supported by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). "However, the ALJ need not accept the opinion of any physician, including a treating physician, if that opinion is brief, conclusory and inadequately supported

1 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin*, 554 F.3d 1219, 1228
 2 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or
 3 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ
 4 may only reject it by providing specific and legitimate reasons that are supported
 5 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester v. Chater*, 81
 6 F.3d 821, 830-31 (9th Cir. 1995)).

7 Dr. Lindgren treated Plaintiff from July 2012 through 2013. *See* Tr. 331-41,
 8 404-05, 434-46. On April 23, 2013, Dr. Lindgren opined that Plaintiff would need
 9 to lie down three to four times a day for thirty minutes at a time and that Plaintiff
 10 would miss four or more days of work a month due to his medical condition.
 11 Tr. 19 (citing Tr. 404-05). Dr. Lindgren further opined that full-time work would
 12 cause Plaintiff’s condition to deteriorate because he would be “unable to rest[.]”
 13 Tr. 19 (citing Tr. 405). The ALJ gave Dr. Lindgren’s opinion “little to no
 14 weight[.]” Tr. 19.

15 Because Dr. Lindgren’s opinion was contradicted by Dr. Rubio, Tr. 87-104,
 16 the ALJ need only offer specific and legitimate reasons to discount it. *Bayliss*, 427
 17 F.3d at 1216.³

18
 19 ³ Citing no legal authority, Plaintiff argues that because the ALJ did not specify
 20 which opinion controverted Dr. Lindgren’s opinion, that it was therefore

1 First, the ALJ rejected Dr. Lindgren's opinion because it was not supported
2 by his examination findings in the treatment record. Tr. 20. A medical opinion
3 may be rejected by the ALJ if it is conclusory, contains inconsistencies, or is
4 inadequately supported. *Bray*, 554 F.3d at 1228; *Thomas v. Barnhart*, 278 F.3d
5 947, 957 (9th Cir. 2002). Moreover, a physician's opinion may be rejected if it is
6 unsupported by the physician's treatment notes. *See Connett v. Barnhart*, 340 F.3d
7 871, 875 (9th Cir. 2003) (affirming ALJ's rejection of physician's opinion as
8 unsupported by physician's treatment notes). Here, the ALJ noted that while Dr.
9 Lindgren's notes documented Plaintiff's complaints of fatigue and malaise, the
10 records did not indicate that these conditions were debilitating. Tr. 20 (citing Tr.
11 443). Dr. Lindgren's treatment notes reflect Plaintiff's self-reported symptoms of
12 "significant lethargy and fatigue and generalized malaise[]" only once during their
13 treating relationship. Tr. 443. However, this is inconsistent with Dr. Lindgren's
14

15 uncontroverted. ECF No. 15 at 7. However, social security regulations do not
16 require ALJs to recite specific words in reviewing a doctor's opinion, and there is
17 no requirement for the ALJ to specify which opinion controverted Dr. Lindgren's.
18 *See Magallenes v. Bowen*, 881 F.2d 747, 755 (9th Cir. 1989) (holding that it is
19 proper for the court to make inferences from an ALJ's discussion of a medical or
20 psychological report, if the inferences are there to be drawn.).

1 assessment of Plaintiff's condition throughout treatment. During the same
2 examination that Plaintiff reported that he was lethargic and fatigued, Dr. Lindgren
3 noted his general appearance as "alert and oriented, no acute distress, pleasant."
4 Tr. 443. He consistently made similar observations throughout the course of
5 treatment. Tr. 333 ("negative for, chills, fatigue" on July 11, 2012); Tr. 340 (On
6 September 18, 2012, "general appearance: Alert and oriented. Patient appears well,
7 cooperative and in no acute distress."); Tr. 437 (April 1, 2013 "no acute distress,
8 pleasant.").

9 The ALJ found that there was no support in the record that Plaintiff must lie
10 down or elevate his legs during the day. Tr. 20. Dr. Lindgren opined that Plaintiff
11 would be restricted from working in part because he needed to lie down three to
12 four times per day for thirty minutes or more per episode. Tr. 404-05. However,
13 the only support for this assertion in the treatment record is Plaintiff's report that
14 he lies down throughout the day. Tr. 443. No other evidence or observations in
15 Dr. Lindgren's treatment notes supports Plaintiff's assertion. *See* Tr. 331-41, 434-
16 46. There are no tests, clinical findings, or other objective evidence to support this
17 assertion or limitation. *See* Tr. 331-41, 434-46. As will be discussed *infra*, the
18 ALJ properly discredited Plaintiff's symptom testimony, casting doubt on his
19 assertions that he must lay down throughout the day. The ALJ determined that
20

1 Plaintiff's testimony is insufficient medical evidence to support Dr. Lindgren's
2 opined limitation.

3 Next, the ALJ concluded that "Dr. Lindgren's treatment reports fail to reveal
4 the type of significant clinical and laboratory abnormalities one would expect if the
5 claimant were in fact disabled[.]" Tr. 20 (internal quotation marks omitted). For
6 example, the nature of Plaintiff's appointments with Dr. Lindgren do not indicate
7 serious illness. On July 11, 2012, Plaintiff met with Dr. Lindgren to establish care,
8 Tr. 331-34, on September 18, 2012, his appointment was for a medication review.
9 Tr. 339-40. On April 1, 2013, he appeared for a physical. Tr. 434-35. That same
10 month, he was treated for swollen feet. Tr. 441-44. Also in April 2013, Plaintiff
11 had an appointment with Dr. Lindgren to have a wart and skin tags removed. Tr.
12 445-46. During each of these appointments, Dr. Lindgren conducted an
13 examination and noted Plaintiff's symptoms. *See* Tr. 331-41, 434-46. No
14 significant symptoms were reported. *Id.* On several occasions, Dr. Lindgren
15 ordered and reviewed lab work, these results were also within normal range. Tr.
16 332-33, 442. Other than a note that Plaintiff should take an over-the-counter
17 magnesium supplement for his mild anemia, Dr. Lindgren did not note anything of
18 concern in Plaintiff's bloodwork. Tr. 442.

19 The ALJ next found that Dr. Lindgren's opinion was not supported by his
20 treatment notes because Dr. Lindgren advised Plaintiff to increase his physical

1 activity, which the ALJ found to be contrary to his ultimate opinion concerning
2 Plaintiff's disability status. Tr. 20 (citing Tr. 443). Dr. Lindgren recommended
3 that Plaintiff "increas[e] his physical activity if possible." Tr. 443. This indicates
4 a belief that Plaintiff could tolerate some physical exertion throughout the day.
5 Overall, the ALJ's conclusion that Dr. Lindgren's relatively mild examination
6 findings do not support his ultimate disability recommendation is well supported in
7 the record and is a specific and legitimate reason to discount his opinion. *Bayliss*,
8 427 F.3d at 1216.

9 Second, the ALJ rejected Dr. Lindgren's opinion because it was not
10 consistent with medical evidence in the record. Tr. 20. An ALJ may discredit
11 treating physicians' opinions that are unsupported by the record as a whole or by
12 objective medical findings. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190,
13 1195 (9th Cir. 2004). Specifically, the ALJ considered the medical records from
14 Dr. Williams, an associate of Dr. Lindgren's. Tr. 20. Dr. Williams treated
15 Plaintiff a number of times throughout the medical record, but did not assess any
16 work restrictions or limitations. Tr. 20 (citing Tr. 406-33). He did not provide an
17 opinion of Plaintiff's inability to work. *Id.* Dr. Williams did note that Plaintiff
18 was "doing quite well" once he was abstinent from alcohol. Tr. 407. Dr. Williams
19 reviewed the results of Plaintiff's medical tests, including an upper endoscopy, and
20 noted "healing of gastric ulcers, mild portal gastrophy and trace esophageal

1 varices.” Tr. 406. These results were benign and indicative of healing. Dr.
2 Williams took regular note of Plaintiff’s reported symptoms. Often, Plaintiff
3 reported no issues, including no nausea, abdominal pain, or diarrhea. *See* Tr. 406,
4 407, 409, 411, 413, 415, 425. Intermittently, Dr. Williams noted “occasional
5 nausea” and a “diarrhea side effect” resulting from medication. Tr. 408, 414, 420.
6 The medical records produced by Dr. Williams do not support Dr. Lindgren’s
7 opinion that Plaintiff was not able to work because they tend to indicate healing
8 and mild symptoms. Discord with the medical record as a whole is a specific and
9 legitimate reason to dismiss Dr. Lindgren’s opinion. *Bayliss*, 427 F.3d at 1216.

10 Third, the ALJ discounted Dr. Lindgren’s opinion because it was based on
11 Plaintiff’s self-reported symptom testimony, which the ALJ properly found not to
12 be credible. Tr. 20. A physician’s opinion may be rejected if it is based on a
13 claimant’s subjective complaints which were properly discounted. *Tonapetyan v.*
14 *Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001); *Morgan v. Comm’r of Soc. Sec.*
15 *Admin.*, 169 F.3d 595, 602 (9th Cir. 1999). The only reference in Dr. Lindgren’s
16 examination notes which relate to the opined limitations are references to
17 Plaintiff’s self-reported symptom claims. Tr. 443. Dr. Lindgren appears to credit
18 those claims. *Id.* He noted “patient is constantly nauseous and has very frequent
19 diarrhea stools from the lactulose. He needs to lie down 3-4 times or more daily
20 and (sic) about half an hour at a time. He states that he only fill (sic) “good” for

1 about one hour during the day.” Tr. 443. These symptoms mirror Dr. Lindgren’s
2 opinion that Plaintiff would be restricted from work because he would need to lie
3 down throughout the day, however, they are based on Plaintiff’s self-reported
4 complaints. They are not evident anywhere in Dr. Lindgren’s notes except on the
5 day that Plaintiff asked Dr. Lindgren to fill out disability paperwork. Tr. 443. Dr.
6 Lindgren’s reliance on Plaintiff’s discounted symptom testimony is a specific and
7 legitimate reason to discount Dr. Lindgren’s opinion. *Bayliss*, 427 F.3d at 1216.

8 **B. Adverse Credibility Finding**

9 Next, Plaintiff faults the ALJ for failing to provide specific findings with
10 clear and convincing reasons for discrediting his symptom claims. ECF No. 15 at
11 9-13.

12 An ALJ engages in a two-step analysis to determine whether a Plaintiff’s
13 testimony regarding subjective pain or symptoms is credible. “First, the ALJ must
14 determine whether there is objective medical evidence of an underlying
15 impairment which could reasonably be expected to produce the pain or other
16 symptom alleged.” *Molina*, 674 F.3d at 1112 (internal quotation marks omitted).
17 “The claimant is not required to show that her impairment could reasonably be
18 expected to cause the severity of the symptom [he] has alleged; [he] need only
19 show that it could reasonably have caused some degree of the symptom.” *Vasquez*
20 *v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2008) (internal quotation marks omitted).

1 Second, “[i]f the claimant meets the first test and there is no evidence of
2 malingering, the ALJ can only reject the claimant’s testimony about the severity of
3 the symptoms if [he] gives ‘specific, clear and convincing reasons’ for the
4 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal
5 citations and quotations omitted). “General findings are insufficient; rather, the
6 ALJ must identify what testimony is not credible and what evidence undermines
7 the claimant’s complaints.” *Id.* (quoting *Lester*, 81 F.3d at 834); *Thomas*, 278 F.3d
8 at 958 (“[T]he ALJ must make a credibility determination with findings
9 sufficiently specific to permit the court to conclude that the ALJ did not arbitrarily
10 discredit claimant’s testimony.”). “The clear and convincing [evidence] standard
11 is the most demanding required in Social Security cases.” *Garrison v. Colvin*, 759
12 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278
13 F.3d 920, 924 (9th Cir. 2002)).

14 In making an adverse credibility determination, the ALJ may consider, *inter*
15 *alia*, (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the
16 claimant’s testimony or between his testimony and his conduct; (3) the claimant’s
17 daily living activities; (4) the claimant’s work record; and (5) testimony from
18 physicians or third parties concerning the nature, severity, and effect of the
19 claimant’s condition. *Thomas*, 278 F.3d at 958-59.

1 This Court finds the ALJ provided specific, clear, and convincing reasons
2 for finding that Plaintiff's statements concerning the intensity, persistence, and
3 limiting effects of his symptoms were "not entirely credible." Tr. 17.

4 1. *Objective Medical Evidence*

5 First, the ALJ found that "objective medical evidence does not substantiate
6 the claimant's statements." Tr. 17. An ALJ may not discredit a claimant's pain
7 testimony and deny benefits solely because the degree of pain alleged is not
8 supported by objective medical evidence. *Rollins v. Massanari*, 261 F.3d 853, 857
9 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991); *Fair v.*
10 *Bowen*, 885 F.2d 597, 601 (9th Cir. 1989). However, the medical evidence is a
11 relevant factor in determining the severity of a claimant's pain and its disabling
12 effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §§ 404.1529(c)(2), 416.929(c)(2).

13 Additionally, the ALJ found that Plaintiff's relatively modest treatment
14 record was inconsistent with the level of disability he alleged. Tr. 18. The ALJ is
15 permitted to consider the claimant's lack of treatment in making a credibility
16 determination. *Burch*, 400 F.3d at 681. The ALJ reviewed in detail Plaintiff's
17 medical record. *See* Tr. 17-18. He acknowledged that Plaintiff had treatment
18 consistent with cirrhosis, including a number of esophagogastroduodenoscopies,
19 but that the "medical evidence of record failed to reveal the type of significant
20 clinical and laboratory abnormalities one would expect if the claimant were in fact

1 disabled [.]” Tr. 18. As discussed regarding Dr. Lindgren *supra*, Plaintiff
2 presented regularly with benign results. For example, he appeared to establish
3 treatment, manage his medication, undergo routine endoscopies, have skin tags
4 removed, and to treat swelling. Tr. 331-341, 434-446. But, he did not appear for
5 major maladies, suggesting that he was not suffering any incident to his diagnoses.

6 Next, the ALJ considered the objective medical evidence indicating that
7 Plaintiff’s condition improved with treatment. As discussed *supra*, “no focal
8 hepatic parenchymal abnormality was detected[]” during an examination. Tr. 338.
9 Furthermore, test results “showed healing of gastric ulcers, mild portal gastropathy,
10 and trace esophageal varices.” Tr. 18. Improved indicators of cirrhosis tend to
11 suggest improved symptoms associated with those maladies. Objective medical
12 evidence that tends to indicate Plaintiff was not as severely disabled as he alleged
13 is a specific, clear and convincing reason to reject Plaintiff’s symptom testimony.
14 *Ghanim*, 763 F.3d at 1163.

15 2. *Impairments Controlled with Treatment*

16 The ALJ found that Plaintiff’s symptoms were effectively controlled with
17 treatment. Tr. 18. An impairment that can be effectively controlled with treatment
18 is not disabling. *Warre v. Comm’r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th
19 Cir. 2006). Plaintiff was diagnosed with cirrhosis of the liver and end-stage liver
20 disease, however, these conditions and their resulting side-effects were treated with

1 medication. Tr. 17-18. The ALJ noted that Plaintiff told Dr. Lindgren that he was
2 “tolerating his medications well” and did not report any adverse side effects from
3 the medications. Tr. 18 (citing Tr. 340). Plaintiff reported that he suffered nausea
4 and diarrhea as a side effect of his medication, and that the ALJ failed to take these
5 symptoms into account. ECF No. 15 at 11. However, Plaintiff’s medical record
6 does not support that Plaintiff’s side effects from medication were sufficiently
7 limiting to require a different RFC. During several examinations, Plaintiff reported
8 to his doctors that he did not suffer from any nausea or diarrhea. Tr. 406 (“He
9 denies nausea or vomiting. He has no abdominal pain. Bowel movements are
10 normal.”); Tr. 407 (“no nausea or vomiting, bowel movements normal.”); Tr. 409
11 (“No rectal bleeding, nausea, vomiting, constipation, diarrhea.”). Plaintiff
12 complained to Dr. Williams about nausea and diarrhea resulting from medication,
13 but reported that it was only “occasional nausea[.]” Tr. 420. On January 18, 2013,
14 Dr. Williams reduced Plaintiff’s prescribed dose of Lactulose to one teaspoon daily
15 from two tablespoons twice a day due to the reported diarrhea side effect. Tr. 421.
16 Plaintiff’s medical record does not reflect any reports of diarrhea as a side effect of
17 medication after that date. Plaintiff’s medical record, therefore, tends to indicate
18 that nausea and diarrhea as a side effect of medication were not limiting
19 impairments.

20

1 Furthermore, the ALJ noted that Plaintiff's symptoms improved once he
2 stopped drinking alcohol. Tr. 18. Plaintiff reported intermittent abstinence from
3 alcohol, and improvement when he abstained. Tr. 17-18.⁴ For example, during an
4 abdominal ultrasound in November 2012, Plaintiff "had findings consistent with
5 cirrhosis but no focal hepatic parenchymal abnormality was detected." Tr. 338. In
6 January 2013, test results "showed healing of gastric ulcers, mild portal
7 gastropathy, and trace esophageal varices." Tr. 18 (citing Tr. 406). This medical
8 evidence tends to indicate that abstinence and medication improved Plaintiff's
9 condition. Improvement with treatment is a specific, clear and convincing reason
10 to reject Plaintiff's symptom testimony. *Ghanim*, 763 F.3d at 1163.

11 3. *Evidence of Daily Activities*

12 The ALJ found that Plaintiff's "daily activities were not limited to the extent
13 one would expect, given his complaints of disabling symptoms and limitations."
14 Tr. 19. It is reasonable for an ALJ to consider a claimant's activities which
15 undermine claims of totally disabling pain in making the credibility determination.

16 _____
17 ⁴ Plaintiff's medical record does note symptoms of withdrawal (such as chest pain)
18 following abstention. Tr. 17 (citing Tr. 369-76). However, Plaintiff does not
19 allege these symptoms to be a disabling condition, as they did not last more than
20 twelve months. No further consideration will be given to them here.

1 *See Rollins*, 261 F.3d at 857. Notwithstanding, it is well-established that a
2 claimant need not “vegetate in a dark room” in order to be deemed eligible for
3 benefits. *Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir. 1987). However, if a
4 claimant is able to spend a substantial part of his day engaged in pursuits involving
5 the performance of physical functions that are transferable to a work setting, a
6 specific finding as to this fact may be sufficient to discredit an allegation of
7 disabling excess pain. *Fair*, 885 F.2d at 603.

8 Here, Plaintiff is able to care for himself, including preparing meals, doing
9 laundry, and cleaning his apartment. Tr. 19 (citing Tr. 239-40). Plaintiff is able to
10 groom himself, though with some support, such as holding on to the wall while
11 showering or sitting while getting dressed. Tr. 19 (citing Tr. 239). He goes
12 outside twice a day. Tr. 241. He is able to go grocery shopping independently.
13 Tr. 19 (citing Tr. 241). Plaintiff spends social time with his girlfriend every day,
14 social groups four times per week, and with his friends over the phone or internet
15 every day. Tr. 19 (citing Tr. 242). This amount of daily functioning is not
16 consistent with the Plaintiff’s allegations that he cannot work throughout the day.
17 His daily activities evidence that Plaintiff can regularly leave the house, travel on
18 his own, maintain social functioning, and stand and move throughout the day. This
19 undercuts his symptom testimony that his fatigue and nausea keep him from
20 working throughout the day. ECF No. 15 at 2. Even if the evidence of Plaintiff’s

1 daily activities may be interpreted more favorably to the Plaintiff, it is susceptible
2 to more than one rational interpretation, and therefore the ALJ's conclusion must
3 be upheld. *See Burch*, 400 F.3d at 679. Thus, Plaintiff's daily activities were
4 reasonably considered by the ALJ as inconsistent with his complaints of disabling
5 symptoms and limitations. Moreover, even assuming, arguendo, that the ALJ erred
6 in this reasoning, any error would be harmless because the ALJ gave additional
7 reasons, supported by substantial evidence, for the credibility determination. *See*
8 *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008).
9 As long as there is substantial evidence supporting the ALJ's decision and the error
10 does not affect the ultimate nondisability determination, the error is harmless. *Id.*
11 at 1162; *Stout v. Comm'r of Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006).

12 4. *Reason for Stopping Work*

13 The ALJ discounted Plaintiff's symptom testimony because "there is
14 evidence that he stopped working for reasons not related to the allegedly disabling
15 impairments." Tr. 19. An ALJ may consider that a claimant stopped working for
16 reasons unrelated to the allegedly disabling condition in making a credibility
17 determination. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008);
18 *Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir. 2001). Here, Plaintiff admitted
19 that he stopped working in 2011 because he was terminated from employment
20 related to a driving under the influence charge. Tr. 19 (citing Tr. 217). Plaintiff's

1 allegedly disabling condition relates to alcohol consumption, however, his
2 disabling condition was not the cause of his work stoppage. *Id.* Stopping work for
3 a reason other than one's disabling impairment is a specific, clear and convincing
4 reason for the ALJ to discount the Plaintiff's symptom testimony. *Ghanim*, 763
5 F.3d at 1163.

6 **C. Step Five Determination**

7 Here, Plaintiff provides no support for his assertion that the ALJ did not
8 conduct a proper step five evaluation other than the previously addressed allegation
9 that the ALJ improperly weighed the medical evidence. ECF No. 15 at 13-14.
10 Having previously found that the ALJ properly discounted Dr. Lindgren's opinion,
11 this Court does not find error at step five.

12 **CONCLUSION**

13 After review, the Court finds that the ALJ's decision is supported by
14 substantial evidence and free of harmful legal error.

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IT IS ORDERED:

1. Plaintiff's motion for summary judgment (ECF No. 15) is **DENIED**.
 2. Defendant's motion for summary judgment (ECF No. 16) is **GRANTED**.

The District Court Executive is directed to file this Order, enter

JUDGMENT FOR THE DEFENDANT, provide copies to counsel, and **CLOSE THE FILE**.

DATED this 27th day of February, 2017.

s/Mary K. Dimke

MARY K. DIMKE

UNITED STATES MAGISTRATE JUDGE